IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 30.8.2006

Karamjit Kaur

...Petitioner

versus

Ritu Bala and others.

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.A.P.Bhandari, Advocate
for the petitioner.
Ms.Reeta Kohli, DAG, Punjab.

UMA NATH SINGH, J. (ORAL)

By filing this writ petition, the petitioner has challenged the election of Ritu Bala, respondent No.1, to the Municipal Council, Moga (Ward No.20), on the ground that once respondent No.1 had filled in Form 23 under Rule 41 of the Punjab Municipal Election Rules, 1994 (for short `the Rules'), she had ceased to be a candidate in fray for contesting the election. Admittedly, the petitioner filed two nomination papers, one as a candidate of Indian National Congress and another as an independent candidate from Ward No.20. Similarly, respondent No.1 also filled two nomination papers, one as Akali Dal candidate and another as an independent candidate from the same ward. Both, the petitioner as well as respondent No.1, also made request to the Returning Officer (SDM, Moga), for withdrawal of their candidatures as independent candidates. The petitioner made such a request on a simple application submitted to the Returning Officer, whereas respondent No.1 filled in Form 23 under Rule 41 of the Rules, as required under the Rules. It appears that both the

applications were accepted by the Returning Officer, and thereafter, a list of candidates contesting the election was duly published. It also appears that at the time of publication of the list, the petitioner did not lodge any protest or raise objection as to the candidature of respondent No.1. The election was peacefully conducted and the petitioner polled 922 votes, whereas respondent No.1 got 961 votes. Respondent No.1 was declared elected as such. Learned counsel for the petitioner submitted that filling in Form 23 under Rule 41 of the Rules, amounts to complete withdrawal from the fray. Admittedly, more than one set of nomination papers is permitted. As per the Rules, only Form 23 is the mode for withdrawal of candidature from the election fray. The Rules do not provide that by filling in Form 23, one is completely ousted from the fray. This is only a presumption without a valid basis. Moreover, Rule 41 of the Rules also contains a provision that on receipt of notice for withdrawal as per Form 23, the Returning Officer is to publish a notice in Form 23-A. I have also perused the format of Form 23A under Rule 41 of the Rules. It contains name of the candidate, address and remarks by the Returning Officer. The petitioner, admittedly, did not build up her argument before the Tribunal on the strength of the remarks in Form 23A, nor was the form placed before the Tribunal. However, since the Returning Officer published the name of respondent No.1 as an Akali Dal candidate to contest the election and deleted her name as an independent candidate in terms of the contents filled in Form 23, I do not find any basis to allow the plea of the petitioner on technical ground. Further, the petitioner did not raise any objection at the time when name of respondent No.1 was published as an Akali Dal candidate in the fray. She also did not care to inspect the record so as to find out the remarks of the Returning

Officer given in Form 23A or made an application or specific request to the Tribunal to peruse that form. Moreover, she rather contested the election in opposition to respondent No.1. Thus, it would not be open for the petitioner to challenge the election on technical ground, as pleaded by learned counsel.

Accordingly, the writ petition, being devoid of merits, is, hereby, dismissed.

August 30, 2006 **(UMA NATH SINGH)**
pk **JUDGE**